

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	
	)	CC Docket No. 01-174
Requirements Governing the NECA Board	)	
of Directors under Section 69.602 of the	)	
Commission's Rules	)	
	)	
and	)	
	)	
Requirements for the Computation of	)	
Average Schedule Company Payments	)	
under Section 69.606 of the	)	
Commission's Rules	)	

**REPLY COMMENTS**

The National Exchange Carrier Association, Inc. (NECA) submits its Reply in the above-captioned proceeding.<sup>1</sup>

In its comments, NECA urged the Commission to eliminate unnecessary regulation and reduce administrative burdens imposed on regulated entities.<sup>2</sup> With respect to the NECA Board election process, NECA suggested that the Commission eliminate the requirement in Subpart G of its rules that NECA conduct annual elections

---

<sup>1</sup> 2000 Biennial Regulatory Review -- Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission's Rules, CC Docket No. 01-174, *Notice of Proposed Rulemaking*, 66 Fed. Reg. 48406 (2001)(NPRM).

<sup>2</sup> NECA Comments (filed Oct. 22, 2001). Comments were also filed by: the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), Fred Williamson and Associates, INC (FWA), the National Telephone Cooperative Association (NTCA), and AT&T.

for its board of directors. Additionally, NECA proposed that the Commission eliminate the contested election requirement applicable to outside director positions.<sup>3</sup>

Commenters support the Commission's attempt to eliminate unnecessary restrictions on how and when NECA conducts its Board of Director elections.

OPASTCO stated that "[t]he Commission should eliminate its rules under Section 69.602, which require all NECA board members to stand for election each year."<sup>4</sup> FWA recognized "that annual Board Election . . . imposes a significant burden as to costs . . . [and] time and expense of annual campaigns. . . ."<sup>5</sup>

OPASTCO observes that, since Delaware General Corporation Law (DGCL) does not require a non-stock corporation to have annual elections, "[t]here is no reason why NECA should not have the same flexibility to elect its board as other private corporations do, within the confines of Delaware law."<sup>6</sup> For example, if the NECA membership and Board prefer a three-year, staggered term election format, they should be permitted to do so without requiring the FCC to conduct a rulemaking proceeding.<sup>7</sup>

Again, Delaware law incorporates provisions that protect members of non-stock corporations. The Commission should allow NECA to conduct its business under such laws, and allow election procedures to be directed by NECA's membership, not by unnecessary Commission regulation.

---

<sup>3</sup> NECA at 3.

<sup>4</sup> OPASTCO at 2.

<sup>5</sup> FWA at 1.

<sup>6</sup> OPASTCO at 3.

<sup>7</sup> *Id.*

NECA's comments proposed a workable method for streamlining the current average schedule development and approval processes. Under NECA's proposal, overall formula levels would be adjusted based on representative cost company changes.<sup>8</sup> Rather than conduct a separate, redundant proceeding to review NECA's calculations, the overall adjustments could be reviewed in the context of NECA access tariff filings and Universal Service Fund (USF) submissions.<sup>9</sup> This approach would simplify the current process, reduce burdens on the Commission, NECA and its member companies, and leave the Commission with full authority to review average schedule revenue requirements and individual formula adjustments in the unlikely event that questions should arise.

Commenters support the need to reduce the complexity of the average schedule development and review processes. NTCA states that "[t]he Commission [should] seek to simplify the processes used for developing and reviewing NECA's average schedule formulas . . . ."<sup>10</sup> OPASTCO confirms that "the resources devoted to the development and review of the average schedule formulas are highly disproportionate to both the size of the companies involved and to the relatively small percentage of revenues they receive from the NECA pools."<sup>11</sup> Furthermore, as OPASTCO explains, "the current present

---

<sup>8</sup> NECA at 8.

<sup>9</sup> *Id.* at 25.

<sup>10</sup> NTCA at 1.

<sup>11</sup> OPASTCO at 3.

complexity of the process leads to unnecessary administrative costs that are ultimately passed on to customers in their rates.”<sup>12</sup>

Responding to Commission proposals set forth in the *NPRM*, AT&T urges the Commission not to “freeze” average schedule formulas without first incorporating certain changes.<sup>13</sup> For example, AT&T states that the Commission must first ensure that the “sampled cost companies, upon which these formulas are based, have removed their USF contribution obligations from embedded costs.”<sup>14</sup> Additionally, AT&T states that the Commission must “ensure that Billing and Collection expenses are properly assigned to the services they support.”<sup>15</sup> Finally, AT&T argues that further changes resulting from the MAG Order<sup>16</sup> may require modifications to the average schedule formulas.<sup>17</sup>

Under NECA’s proposal, these factors would be taken fully into account. Existing formula development procedures assure that all relevant changes in FCC rules governing access charge revenue requirements are incorporated in the average schedules. These formulas would form the “baseline” for future adjustments to overall revenue

---

<sup>12</sup> *Id.* at 4.

<sup>13</sup> AT&T at 2.

<sup>14</sup> *Id.* at 3. AT&T expresses concern that the revenue requirement used to develop formulas may continue to include revenue requirements associated with universal service contributions. However, NECA revised its access tariff, effective July 1, 2001, to exclude federal universal service contribution revenue requirements from common line charges and to recover those amounts from a new federal universal service charge assessed on end users. No adjustment to the formulas is required.

<sup>15</sup> *Id.*

<sup>16</sup> See FCC Adopts Order to Reform Interstate Access Charge System for Rural Carriers, *News Release* (rel. Oct. 11, 2001).

<sup>17</sup> AT&T at 3.

requirements. Since future adjustments would be based on revenue requirement changes experienced by representative cost companies, the effects of any subsequent rule changes by the Commission (including changes in separations rules, MAG implementation steps, etc.) would automatically be reflected in cost company revenue requirement changes and corresponding adjustments to the schedules.

The Commission must not adopt a productivity factor as supported by AT&T.<sup>18</sup> Under the Commission's rules, payments under the average schedule formulas are required to "simulate" representative cost company disbursements. Because cost company settlements are not subject to any productivity adjustments, there is absolutely no basis for applying such an adjustment to average schedule company settlements.<sup>19</sup> As OPASTCO recognizes, "such an addition for average schedule companies alone would not result in an accurate 'simulation' of cost company payments."<sup>20</sup> NECA also agrees with OPASTCO that "it is not feasible to develop a productivity factor that accurately reflects the true efficiency levels of rural, non-price cap local exchange carriers, given their diversity, number and small size."<sup>21</sup>

Finally, AT&T urges the Commission to revise its rules so as to limit average schedule status to companies with less than 50,000 lines.<sup>22</sup> The Commission cannot lawfully adopt AT&T's proposal on the basis of the record in this proceeding. First, the

---

<sup>18</sup> *NPRM* at 9, AT&T at 4.

<sup>19</sup> OPASTCO at 4.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> AT&T at 6.

*NPRM* contains no indication whatsoever that such a limitation would be considered in this proceeding, and there is no way that such a limitation could be considered a “logical outgrowth” of the *NPRM* in this proceeding or any public notice in the Commission’s access reform proceeding.<sup>23</sup>

Even if the Commission had suggested such a possibility in the *NPRM*, AT&T offers no principled basis for amending section 69.603 of the Commission’s rules in such a manner as to prohibit companies with greater than 50,000 access lines from receiving settlements on the basis of the average schedules. AT&T points to no change in circumstances, for example, that would suddenly justify forcible conversion of the over 50,000 access line companies to cost status. In fact, the companies referenced by AT&T (as well as other similarly sized companies that have since converted to cost) were average schedule companies at the time section 69.603 of the Commission’s rules was promulgated. Thus, the Commission cannot rationally conclude, as AT&T appears to assume, that the rule was only intended to permit “small” companies to qualify for average schedule status. Moreover, it has been established that average schedule restrictions based solely on line size or affiliation are arbitrary.<sup>24</sup>

---

<sup>23</sup> “[The] Court looks to see whether the final rule promulgated by the agency is a logical outgrowth of the proposed rule. A final rule is not a logical outgrowth of a proposed rule when the changes are so major that the original notice did not adequately frame the subjects for discussion.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996).

<sup>24</sup> See *ALLTEL Corp. v. FCC*, 838 F.2d 551, 563 (D.C. Cir. 1988); *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095, 1127-1129 (D.C. Cir. 1984).

AT&T also asserts that at least one of the over 50,000 access line average schedule companies would be classified as a Group B company under NECA's tariff, and that such companies are not part of the representative cost companies NECA uses to update the formulas.<sup>25</sup> In fact, classification as a Group B or C company is not dependent on line size but rather on whether a given cost company is part of a larger holding company group. Contrary to AT&T's apparent understanding, companies with over 50,000 access lines are well represented by the Group C companies, and NECA sampling procedures are designed to assure that data from these companies are available and used for average schedule formula development. Thus, Group C companies are representative of average schedule companies, including those with over 50,000 access lines.

AT&T appears to assume that average schedule settlements do not accurately compensate companies with over 50,000 access lines and that access charges would be lower if companies with over 50,000 lines were forced to convert to cost.<sup>26</sup> However, AT&T provides no basis for such a rationale. In fact, NECA's formulas are based on analysis of many company characteristics, including size. Existing settlement formulas accurately target settlements for all participating companies. Total settlements by company size group are designed to "simulate" cost-based settlements regardless of size, and will continue to meet this standard for all companies under NECA's simplified approach as well. There is no basis for excluding companies with over 50,000 access lines or any other particular class of average schedule companies from continuing to receive average schedule settlements under existing or simplified methods.

---

<sup>25</sup> AT&T at 5.

<sup>26</sup> *Id.* at 5-6.

The record supports the need for simplification of the NECA board election and average schedule development process. Specifically, the Commission should revise section 69.602 of its rules to eliminate the requirement that NECA conduct annual elections for its board of directors. Additionally, as suggested by NECA, the Commission should remove the requirement that outside directors must run in a contested election every three years. Eliminating these requirements will allow NECA to elect its Board as other private corporations, in accordance with the Delaware General Corporation Law.

The Commission should also reform the average schedule formula development and review processes by adopting the proposals submitted in NECA's comments. NECA's proposal would allow for updating overall access charge and USF payments in proportion to changes experienced by representative cost companies, a method that will produce reasonable results while significantly reducing administrative burdens on NECA and its member companies.

The Commission should also eliminate the requirement that average schedule formulas be "approved" and instead incorporate review of NECA average schedule revenue requirements within its review of NECA's access tariff filings and USF submissions. This would eliminate the need for the Commission to conduct redundant



reviews of NECA formula proposals each year, while assuring continued Commission oversight of the formulas on an "as needed" basis.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, Inc.

By: 

Richard A. Askoff  
Regina McNeil  
Tracey E.J. Barrett  
*Its Attorneys*

November 5, 2001

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments was served this 5th day of November 2001, by electronic delivery or by mailing copies thereof by United States Mail, first class postage paid, to the persons listed below.

By:   
Shawn O'Brien

The following parties were served:

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204  
Washington, D.C. 20554  
(filed through ECFS)

L. Marie Guillory  
R. Scott Reiter  
NTCA  
4121 Wilson Blvd. Tenth Floor  
Arlington, VA 22203

Jeffrey W. Smith  
Stephen Pastorkovich  
Stuart Polikoff  
OPASTCO  
21 Dupont Circle, N.W., Suite 700  
Washington, D.C. 20036

Judy Sello  
Mark C. Rosenblum  
AT&T Corp.  
Room 113SL2  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Fred Williamson and Associates, Inc.  
2921 E. 91<sup>st</sup> Street, Suite 200  
Tulsa, OK 74137-3300

Margot Smiley Humphrey  
Counsel for the NRTA  
Holland & Knight  
2100 Pennsylvania Ave., NW  
Suite 400  
Washington, D.C. 20037

Lawrence E. Sarjeant  
Linda L. Kent  
John W. Hunter  
Keith Townsend  
Julie L. Rones  
David Cohen  
USTA  
1401 H St., NW  
Suite 600  
Washington, D.C. 20005-2164